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ALEXANDER L. STEVAS
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IN THE

SUPREME COURT OF THE UNITED STATES

No. 80-2112

Edwin R. Long, Ralph E. Long,

PETITIONERS,

v.

Jean M. Bonnes, Christopher Camuto, Farmworkers' Legal Project of the American Civil Liberties Union of Virginia, Inc.; Migrant and Seasonal Farmworkers Association, Inc.,

RESPONDENTS.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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BRIEF IN OPPOSITION

TO PETITION TO CERTIORARI

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The respondents pray that this Honorable Court deny issuance of a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit entered on March 18, 1981.

STATEMENT OF THE CASE

The plaintiffs in this action are two organizations, and an employee of each, which served migrant farmworkers on the Eastern Shore of Virginia. These organizations, the Farmworkers' Legal Project of the American Civil Liberties Union of Virginia, Inc. (Legal Project) and the Migrant and Seasonal Farmworkers Association, Inc. (MSFA), were funded pursuant to Title III, Section 303 of the Comprehensive Employment and Training Act of 1976 (CETA), 29 U.S.C. §§873 et seq., to provide, respectively, legal assistance and various social services to poor farmworkers. Because virtually

all the migrant farmworkers on the Eastern Shore reside during the harvest season in labor camps located on growers' farms, both organizations found it necessary to visit the migrant workers at their labor camps, in order to fulfill their statutorily mandated mission.

On September 1, 1977, both the Legal Project and MSFA were requested to provide services to certain migrant farmworkers residing in labor camps on the defendants' farm property. Jean Bonnes of the Legal Project and Chris Camuto of MSFA went to the Long farm and checked in at the office at the entrance. Finding that neither of the Longs were present at that time, they left word that they were proceeding to one of the labor camps.

Only a short time after Bonnes and Camuto had arrived at the camp and begun conversing with some of the workers

present, the defendant owners of the farm, father and son, arrived. A heated discussion followed. The elder owner, Ralph Long, ordered the legal worker and the social service worker off of his land, threatened them with arrest for trespassing, and told them not to come back until they had a court order.

Plaintiffs shortly thereafter brought this action seeking injunctive relief pursuant to 42 U.S.C. §§1983 and 1985, challenging the defendants' refusal to permit access to defendants' labor camp for the purpose of communicating with and providing statutorily mandated services to the migrant farmworkers residing there. They alleged that the defendants had denied the plaintiffs' access to the migrant workers, deprived them of certain constitutional and statutory rights, had caused irreparable harm to the migrant workers and

prevented them from free association and the expression of ideas.

The matter was heard initially on the plaintiffs' application for interlocutory relief. During the course of that hearing, the parties were able to agree on a consent order which allowed the plaintiff organizations access to their clients, with certain limited restrictions. Thereafter, plaintiffs filed a motion with the district court for an award of attorney's fees pursuant to 42 U.S.C. §1988. This motion was summarily denied. An appeal was then taken to the United States Court of Appeals for the Fourth Circuit, and the district court order was reversed with instructions to conduct an evidentary hearing to determine whether the consent order provided relief to the plaintiffs such that they should be considered the "prevailing party". Bonnes v. Long, 599 F.2d 1316 (4th Cir. 1979).

A hearing was held in the district court on the remand after which the district court entered an order holding that the plaintiffs were not the prevailing party and denying fees. A second appeal was then taken to the Fourth Circuit which once again reversed the district court, determining that the plaintiffs were the "prevailing party". See Opinion, in Petition at App. 1. This judgment rested on two separate bases. First, the court of appeals said that the consent order remedied the state of uncertainty which existed as a result of the elder Longs' statement that the plaintiffs should leave his land and not return until they obtained an order. Second, the Fourth Circuit also determined that the specific elements included in the consent decree gave the plaintiffs substantially more liberal terms of visitation than they had previously enjoyed.

SUMMARY OF ARGUMENT

It is undisputed in this case that the plaintiffs are entitled to an award of reasonable attorney's fees, under the Civil Rights Attorney's Fees Award Act of 1976, 42 U.S.C. §1988, if they were the "prevailing party" under the terms of the consent decree. The Court of Appeals correctly found that substantial benefits were obtained by the plaintiffs in the consent decree and that they were therefore the prevailing parties. The plaintiff organizations had been completely denied access to their farmworker clients for some weeks by defendants, and the settlement reached by the parties restored the plaintiffs' access. Additionally, the consent decree allowed more liberal visitation than had been previously enjoyed by the plaintiffs.

The court of appeals' decision is completely consistent with Supreme Court

precedent and other relevant federal lower court cases. There exist no division of authority within the courts of appeal such as would justify review by the Supreme Court.

ARGUMENT

I. THE COURT OF APPEALS CORRECTLY FOUND THAT THE PLAINTIFFS WERE THE PREVAILING PARTIES AND THEREFORE THEY ARE ENTITLED TO ATTORNEY'S FEES.

The defendants have conceded that attorney's fees should properly be awarded to the plaintiffs in this instance if they achieved a change or benefit or were relieved of a burden pursuant to the terms of the consent order. Although not cited by the defendant, this Court has only recently confirmed that attorney's fees should be properly awarded, pursuant to

42 U.S.C. §1988, when a civil rights plaintiff obtains a successful settlement. Maher v. Gagne, 448 U.S. 122 (1980). The sole legal question presented then is whether the plaintiffs here did achieve a benefit or were relieved of a burden under the consent decree they obtained in this instance.

It is the plaintiff's position that there is overwhelming support in the record for the holding of the court of appeals that the plaintiffs did so prevail in the consent decree. First and foremost, the plaintiffs remedied the specific condition which forced them to go to court in the first place. A paralegal worker of the Legal Project and a social service worker of MSFA had been ordered to leave defendants' farm and told not to return. They and their coworkers were advised by the defendants that they would no longer

be allowed to visit with their migrant farmworker clients at their homes on the defendants' labor camps, and if they returned they would be arrested for trespass. Defendants' clearly willful action foreclosed the two plaintiff organizations from providing the legal and social services which Congress mandated and for which they received federal funds. It also foreclosed the migrant farmworkers on defendants' camps from receiving these services.

Moreover, the defendants themselves directed the plaintiffs to file suit in order to obtain access to their clients. Defendant Ralph Long admitted in his testimony that he told plaintiffs' employees to completely stay away from his property until they obtained a court order allowing access:

> "I say's 'you get off my property and don't you come back anymore until you get a court order.'" Testimony of Defendant Ralph Long, Transcript of Hearing in District Court on January 4, 1980, page 117.

The fact that after this initial incident the defendants agreed to a court order which restored the plaintiffs' right to visit farmworkers at the defendants' labor camps does not change the fact that there was a six-week period during which the plaintiffs were totally foreclosed from visiting with their clients. Moreover, it does not change the fact that it was the defendants' refusal to allow access which forced the lawsuit in the first place. As stated by the Fourth Circuit,

> "All the witnesses to the September 1, 1977 incident, including both the Longs, testified that the elder Long told plaintiffs Camuto and Bornes not to return to the Long property without a court order. Having put the plaintiffs to the

time and expense of litigation in order to clarify their rights, the Longs cannot now be heard to complain about bearing the costs of that measure..." Opinion, reproduced in Petition, at App. 16.

Additionally, the consent decree obtained by the plaintiffs provided significantly more liberal terms of visitation than had been enjoyed even before the September 1, 1977 incident. The defendant growers had allowed plaintiffs to come on to their labor camps prior to that incident, but required that they in all visits first personally check with them. The consent decree, as insisted upon by the plaintiffs, significantly liberalized the notice requirement on client visits. As to the Legal Project's attorneys and paralegals, the settlement totally abandoned any requirement of notice to the Longs when these individuals were coming on to the

farm for meeting with particular clients, or when entering for the purpose of interviewing actual or potential witnesses. In fact, the only time Legal Project attorneys and workers were required to provide notice was when entering upon the defendants' land for the purpose of providing general information to farmworkers about the legal services offered by the Legal Project and concerning general legal rights information. Given the fact that many of the farmworker clients have legal problems which involve disputes with their employers and landlords, it is of some significance that the consent decree allowed the Legal Project workers to visit with their clients in confidence without having to alert their potential legal adversaries to their presence and purpose of visitation.

The Migrant and Seasonal Farmworkers Associaiton also received more

liberal visitation rights under the settlement. MSFA employees were allowed total and unconditioned access to the farmworkers on defendants' land when responding to emergency situations. Taken together, these benefits clearly rise to the level of "achiev(ing) some of the benefits sought through the litigation." Bonnes v. Long, 599 F.2d 1316, 1318 (4th Cir. 1979). Therefore, plaintiffs were the prevailing party and are properly entitled to attorney's fees in the case.

II. THIS CASE IS INAPPROPRIATE FOR REVIEW BECAUSE IT INVOLVES NO UNSETTLED ISSUES OF LAW NOR SUBSTANTIAL CONFLICT OF DECISION

The decision below is completely consistent with the established Supreme Court precedent and with the decisions of the lower federal appellate and trial courts. Consistent with the ruling of the

Fourth Circuit, this Court has recently held that a settlement conferring benefits upon a civil rights plaintiff entitles him to an award of attorney's fees under 42 U.S.C. §1988. Maher v. Gagne, 448 U.S. 122 (1980). Consistent with the ruling at issue here, this Court also specifically determined that a defendant did not have to be found guilty of violating federal law in order to have an award of attorney's fees levied against him. Id. at 128-130. See also Maine v. Thiboutot, 448 U.S. 1 (1980). The various courts of appeal have also consistently applied these principles, allowing attorney's fees to the civil rights plaintiff who achieves some element of relief without a formal determination of his claim on the merits. Nadeau v. Helgemoe, 581 F.2d 275 (1st Cir. 1978); Mid-Hudson Legal Services, Inc. v. G & U, Inc., 578

F.2d 34 (2d Cir. 1978); Morrison v. Ayoob, 627 F.2d 669 (3rd Cir. 1980); Bonnes v. Long, 599 F.2d 1316 (4th Cir. 1979); Brown v. Culpepper, 559 F.2d 274 (5th Cir. 1977); Incarcerated Men of Allen County Jail v. Fair, 507 F.2d 281 (6th Cir. 1974); Williams v. Miller, 620 F.2d 199 (8th Cir. 1980); Parker v. Matthews, 511 F.Supp. 1059, aff'd sub. nom., 561 F.2d 320 (D.C. Cir. 1977).

In fact, the decision below is almost identical on its facts and legal conclusions with the Second Circuit decision in Mid-Hudson Legal Services, Inc. v. G & U, Inc. supra. Both cases involve growers who excluded legal and social serivce organizations from visiting migrant workers housed on their farms. The defendant growers in both cases relented once suit was filed and agreed

to a settlement which allowed access by the plaintiff organizations. Both courts of appeal determined that such constituted sufficient relief to entitle the plaintiffs to attorney's fees.

The defendants have cited absolutely no authority which conflicts with the principles and findings announced in the decision below. Given this degree of uniformity of decision, there is no need for this Court to grant certiorari to provide a clarifying ruling.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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CERTIFICATION

I, Stephen W. Bricker, counsel for the respondents, and a member of the Bar of the Supreme Court of the United States, do hereby certify that true copies of the foregoing Brief in Opposition to Petition for Certiorari were mailed, postage prepaid, to Daniel Hartnett, Esquire, AYERS, HARTNETT & CUSTIS, Court Green, Accomac, Virginia 23301, counsel for petitioner, pursuant to Supreme Court Rule 28.3, on this 15th day of July, 1981.

Stephen W. Bricker

AFFIDAVIT OF SERVICE

In accordance with Rules of the Supreme Court of the United States, I hereby certify that I have this 15th day of July, 1981, filed the required copies of the Brief in Opposition to Petition to Certiorari in the Clerk's Office of the Supreme Court of the United States.

BY: Barbara E. Crowe

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July 15, 1981

Sworn to before me this 15th day of July, 1981.

Cynthia O. Gray
NOTARY PUBLIC FOR VIRGINIA

My Commission Expires: 8/10/84